

PATRICK D. POWELL

v.

DEPARTMENT OF THE ARMY

DOCKET No.
SF75257990001

OPINION AND ORDER

Through counsel, appellant filed a petition for review of the decision of the Board's San Francisco Regional Office which dismissed his appeal for its failure to come within the Board's appellate jurisdiction. The matter which appellant sought to appeal was his three day suspension from duty for alleged leave violations.

The agency had advised appellant of a right to appeal to the Board for review of the procedures used in effecting the suspension. This advice was erroneous. While such an appeal could be taken with respect to suspensions initiated prior to January 11, 1979, the effective date of the Civil Service Reform Act of 1979, Pub. L. 95-454, 92 Stat. 1111 (October 13, 1978), see 5 C.F.R. § 752.304 (1978), there is no similar right in connection with those actions, such as the one effected against appellant, initiated on or after January 11, 1979. See Title V, United States Code, Chapter 75, Subchapter I; Title 5, Code of Federal Regulations, Part 752, Subpart B (1979); *Clark v. Department of State*, 3 MSPB 94 (1980); *Marks v. Department of the Air Force*, 3 MSPB 17 (1980).

The agency's error in notifying appellant of a right of appeal is insufficient to vest jurisdiction in the Board. *Bradford v. Department of Army*, 3 MSPB 115 (1980); *Metz v. U.S. Postal Service*, 2 MSPB 103 (1980). Similarly, the appellant's contention that the suspension constitutes a prohibited personnel practice and was effected because of his union activities fails to bring the matter within the scope of the Board's appellate jurisdiction, although such an allegation may be raised to the Special Counsel for his consideration. *Wren v. Department of the Army*, 2 MSPB 174 (1980).

Accordingly, the Board finds that the petition for review fails to show error in the determination of the presiding official. The petition, therefore, is DENIED.

This is the final order of the Merit Systems Protection Board in this case. Appellant is hereby notified of the right to seek judicial review of the Board's action as specified in 5 U.S.C. § 7703. A

petition for judicial review must be filed in the appropriate court no later than thirty (30) days after appellant's receipt of this order.

For the Board:

ROBERT E. TAYLOR,
Secretary.

WASHINGTON, D.C., *December 10, 1981*